

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

Request from Jefferson County to extend their waiver from 702 KAR 6:090, Minimum Nutrition Standards

Applicable Statute or Regulation:

KRS 156.160(2)

Action Question:

Should the Kentucky Board of Education (KBE) extend the waiver from 702 KAR 6:090, as requested by the Jefferson County School District?

History/Background:

Existing Policy. 702 KAR 6:090, Minimum Nutrition Standards, prohibits the sale of any food or beverage item in competition with the breakfast or lunch programs until thirty (30) minutes after the close of the last lunch serving period.

In December 2002, the KBE granted a waiver from the requirements of 702 KAR 6:090 to the Jefferson County Public Schools (JCPS). The waiver allowed JCPS to operate certain vending machines during the entire school day on the condition that those machines contained items of specified nutrient content. The KBE subsequently renewed the waiver for an additional year. That extension expired in June 2005.

During its recently concluded session, the General Assembly passed Senate Bill (SB) 172 and the Governor signed it into law. The law took effect on June 20, 2005. Section 4(3) of the bill codifies 702 KAR 6:090(2). Although KRS 156.160(2) allows the KBE to waive the operation of an administrative regulation, there is no statutory authority that allows the KBE to waive the operation of any state statute. Since the waiver previously granted to JCPS allows the operation of vending machines prior to 30 minutes after the last lunch period (operation that conflicts with Section 4(3) of SB 172), an extension of the waiver would conflict with existing state statute.

On April 26, the Commissioner notified JCPS of KDE's position on extension of the waiver due to SB 172's passage (letter attached). Subsequently, the Commissioner received the official request for renewal of the waiver from JCPS in a letter dated May 25 (letter attached). Additionally, a response dated June 13 was sent to JCPS indicating the issue would be on the August agenda (letter attached).

Staff Recommendation(s) and Rationale(s):

Staff is of the opinion the KBE does not have the authority to waive the operation of a state statute. Therefore, staff recommends that KBE deny the request for extension of the waiver.

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Deputy Commissioner

Commissioner of Education

Date:

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